

ROGELIO VERGARA MORALES

NAME

202136931

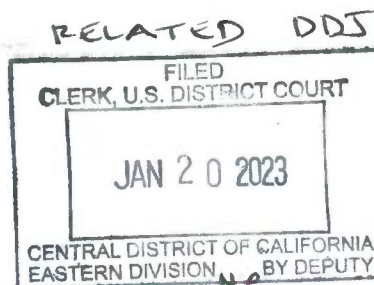
PRISON IDENTIFICATION/BOOKING NO.

260 N. SPRING STREET

ADDRESS OR PLACE OF CONFINEMENT

BLYTHE, CA 92225

Note: It is your responsibility to notify the Clerk of Court in writing of any change of address. If represented by an attorney, provide his or her name, address, telephone and facsimile numbers, and e-mail address.



FEE PAID

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASE NUMBER:

CV

EDCV23-00102-FLA-

To be supplied by the Clerk of the United States District Court

SP

ROGELIO VERGARA MORALES

FULL NAME (Include name under which you were convicted)

Petitioner,

v.

CHAD BIANCO

NAME OF WARDEN, SUPERINTENDENT, JAILOR, OR AUTHORIZED
PERSON HAVING CUSTODY OF PETITIONER

Respondent.

☐ AMENDED

PETITION FOR WRIT OF HABEAS CORPUS
BY A PERSON IN STATE CUSTODY

28 U.S.C. § 2254

PLACE/COUNTY OF CONVICTION RIVERSIDE
PREVIOUSLY FILED, RELATED CASES IN THIS DISTRICT COURT
(List by case number)

CV

CV

INSTRUCTIONS - PLEASE READ CAREFULLY

1. To use this form, you must be a person who either is currently serving a sentence under a judgment against you in a California state court, or will be serving a sentence in the future under a judgment against you in a California state court. You are asking for relief from the conviction and/or the sentence. This form is your petition for relief.

2. In this petition, you may challenge the judgment entered by only one California state court. If you want to challenge judgments entered by more than one California state court, you must file a separate petition for each court.

3. Make sure the form is typed or neatly handwritten. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.

4. Answer all the questions. You do not need to cite case law, but you do need to state the federal legal theory and operative facts in support of each ground. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a legal brief or arguments, you may attach a separate memorandum.

5. You must include in this petition all the grounds for relief from the conviction and/or sentence that you challenge. You must also state the facts that support each ground. If you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

6. You must pay a fee of \$5.00. If the fee is paid, your petition will be filed. If you cannot afford the fee, you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out and sign the declaration of the last two pages of the form. Also, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account at the institution. If your prison account exceeds \$25.00, you must pay the filing fee.

7. When you have completed the form, send the original and two copies to the following address:

Clerk of the United States District Court for the Central District of California
United States Courthouse
ATTN: Intake/Docket Section
255 East Temple Street, Suite TS-134
Los Angeles, California 90012

PLEASE COMPLETE THE FOLLOWING (check appropriate number):

This petition concerns:

1. ☒ a conviction and/or sentence.
2. ☐ prison discipline.
3. ☐ a parole problem.
4. ☐ other.

PETITION

1. Venue

- a. Place of detention BLYTHE JAIL, BLYTHE, CA.
- b. Place of conviction and sentence RIVERSIDE COUNTY SUPERIOR COURT,
9 YEARS, 8 MONTHS

2. Conviction on which the petition is based (a separate petition must be filed for each conviction being attacked).

- a. Nature of offenses involved (include all counts): FILING A FALSE INSTRUMENT,
STALKING W/ RESTRAINING ORDER, AND DISOBEYING
A COURT ORDER
- b. Penal or other code section or sections: CAL. PENAL CODES §§ 646.9(b),
115, 166(a)(4)
- c. Case number: RIF1701355
- d. Date of conviction: DECEMBER 3, 2019
- e. Date of sentence: DECEMBER 3, 2021
- f. Length of sentence on each count: 1 x 646.9(b) = 3 YEARS, 1 x 115 = 8 MONTHS,
12 x 166(a)(4) = 6 YEARS
- g. Plea (check one):
☒ Not guilty
☐ Guilty
☐ Nolo contendere
- h. Kind of trial (check one):
☒ Jury
☐ Judge only

3. Did you appeal to the California Court of Appeal from the judgment of conviction? ☒ Yes ☐ No

If so, give the following information for your appeal (and attach a copy of the Court of Appeal decision if available):

- a. Case number: E072462
- b. Grounds raised (list each):
(1) INSUFFICIENCY OF EVIDENCE
(2) RESTITUTION ISSUES

(3) INVALID LEGAL THEORY

(4) _____

(5) _____

(6) _____

c. Date of decision: JUNE 18, 2021d. Result REVERSED IN PART, AFFIRMED IN PART, REMAINED

4. If you did appeal, did you also file a Petition for Review with the California Supreme Court of the Court of Appeal decision? ☐ Yes ☒ No

If so, give the following information (and attach copies of the Petition for Review and the Supreme Court ruling if available):

a. Case number: _____

b. Grounds raised (list each):

(1) _____

(2) _____

(3) _____

(4) _____

(5) _____

(6) _____

c. Date of decision: _____

d. Result _____

5. If you did not appeal:

a. State your reasons

N/A

b. Did you seek permission to file a late appeal? ☐ Yes ☒ No N/A

6. Have you previously filed any habeas petitions in any state court with respect to this judgment of conviction?

☒ Yes ☐ No

If so, give the following information for each such petition (use additional pages, if necessary, and attach copies of the petitions and the rulings on the petitions if available):

a. (1) Name of court: CALIFORNIA SUPREME COURT(2) Case number: 5275147(3) Date filed (or if mailed, the date the petition was turned over to the prison authorities for mailing): JUNE 21, 2022

(4) Grounds raised (list each):

- (a) COMPETENCY / LACK OF COUNSEL
- (b) LACK OF NOTICE
- (c) INEFFECTIVE ASSISTANCE OF COUNSEL
- (d) _____
- (e) _____
- (f) _____

(5) Date of decision: _____

(6) Result DENIAL(7) Was an evidentiary hearing held? ☐ Yes ☒ Nob. (1) Name of court: COURT OF APPEAL(2) Case number: E078776, E078519(3) Date filed (or if mailed, the date the petition was turned over to the prison authorities for mailing): UNKNOWN

(4) Grounds raised (list each):

- (a) COMPETENCY / LACK OF COUNSEL
- (b) LACK OF NOTICE
- (c) INEFFECTIVE ASSISTANCE OF COUNSEL
- (d) _____
- (e) _____
- (f) _____

(5) Date of decision: UNKNOWN(6) Result DENIAL(7) Was an evidentiary hearing held? ☐ Yes ☒ Noc. (1) Name of court: RIVERSIDE SUPERIOR COURT(2) Case number: CVSW2110416 / CVR1220093(3) Date filed (or if mailed, the date the petition was turned over to the prison authorities for mailing): UNKNOWN

(4) Grounds raised (list each):

- (a) COMPETENCY / LACK OF COUNSEL
- (b) LACK OF NOTICE
- (c) INEFFECTIVE ASSISTANCE OF COUNSEL
- (d) _____
- (e) _____
- (f) _____

(5) Date of decision: 1-25-22, 3-21-22(6) Result DENIAL(7) Was an evidentiary hearing held? ☐ Yes ☒ No7. Did you file a petition for certiorari in the United States Supreme Court? ☐ Yes ☒ No

If yes, answer the following:

(1) Docket or case number (if you know): N/A(2) Result: N/A(3) Date of result (if you know): (4) Citation to the case (if you know):

8. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than five grounds. Summarize briefly the facts supporting each ground. For example, if you are claiming ineffective assistance of counsel, you must state facts specifically setting forth what your attorney did or failed to do.

CAUTION: *Exhaustion Requirement:* In order to proceed in federal court, you must ordinarily first exhaust your state court remedies with respect to each ground on which you are requesting relief from the federal court. This means that, prior to seeking relief from the federal court, you first must present all of your grounds to the California Supreme Court.

a. Ground one: THE TRIAL COURT DEPRIVED ME OF REPRESENTATIVE COUNSEL AT TRIAL

(1) Supporting FACTS: ABOUT OCTOBER 24, 2018, THE TRIAL COURT DENIED MY REQUEST FOR REPRESENTATIVE TRIAL COUNSEL EVEN AFTER A LICENSED PSYCHIATRIST OPINED THAT I NOT "REPRESENT MYSELF" DUE TO PRESCRIBED MENTAL HEALTH MEDICATION.

(2) Did you raise this claim on direct appeal to the California Court of Appeal? ☐ Yes ☒ No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☐ Yes ☒ No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? ☒ Yes ☐ No

b. Ground two: THE TRIAL COURT DEPRIVED ME OF A COMPETENCY HEARING

(1) Supporting FACTS: ABOUT OCTOBER 24, 2018, THE TRIAL COURT FAILED TO HOLD A COMPETENCY HEARING

EVEN AFTER I PRESENTED SUBSTANTIAL EVIDENCE
OF INCOMPETENCY, TO WIT, A LETTER FROM A
LICENSED PSYCHIATRIST ORDERING I NOT REPRESENT
MYSELF AND THAT I NOT RETURN TO WORK.

- (2) Did you raise this claim on direct appeal to the California Court of Appeal? ☐ Yes ☒ No
 (3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☐ Yes ☒ No
 (4) Did you raise this claim in a habeas petition to the California Supreme Court? ☒ Yes ☐ No

c. Ground three: THE TRIAL COURT DEPRIVED ME OF
NOTICE TO CRIMINAL CHARGES

(1) Supporting FACTS: OVER MY OBJECTION, THE TRIAL COURT
ORDERED THE PROSECUTOR TO AMEND THE
INFORMATION TO INCLUDE A PENAL CODE §
646.9(b) CHARGE WITHOUT PROVIDING ME
NOTICE OR OPPORTUNITY TO DEFEND.

- (2) Did you raise this claim on direct appeal to the California Court of Appeal? ☐ Yes ☒ No
 (3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☐ Yes ☒ No
 (4) Did you raise this claim in a habeas petition to the California Supreme Court? ☒ Yes ☐ No

d. Ground four: APPELLATE COUNSEL RENDERED INEFFECTIVE
ASSISTANCE OF COUNSEL

(1) Supporting FACTS: APPELLATE COUNSEL UNREASONABLY
FAILED TO URGE REVERSAL OF MY § 646.9(b)
CONVICTION ON THE GROUND I WAS GIVEN NO NOTICE
OF THIS CHARGE AND, BUT FOR THIS OMISSION,
I WOULD NOT STAND CONVICTED OF THIS CHARGE.

- (2) Did you raise this claim on direct appeal to the California Court of Appeal? ☐ Yes ☒ No
 (3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☐ Yes ☒ No
 (4) Did you raise this claim in a habeas petition to the California Supreme Court? ☒ Yes ☐ No

e. Ground five: _____

(1) Supporting FACTS: _____

- (2) Did you raise this claim on direct appeal to the California Court of Appeal? ☐ Yes ☐ No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☐ Yes ☐ No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? ☐ Yes ☐ No

9. If any of the grounds listed in paragraph 8 were not previously presented to the California Supreme Court, state briefly which grounds were not presented, and give your reasons: N/A

10. Have you previously filed any habeas petitions in any federal court with respect to this judgment of conviction?

☐ Yes ☒ No

If so, give the following information for each such petition (use additional pages, if necessary, and attach copies of the petitions and the rulings on the petitions if available):

a. (1) Name of court: _____

(2) Case number: _____

(3) Date filed (or if mailed, the date the petition was turned over to the prison authorities for mailing): _____

(4) Grounds raised (list each):

(a) N/A

(b) _____

(c) _____

(d) _____

(e) _____

(f) _____

(5) Date of decision: _____

(6) Result _____

(7) Was an evidentiary hearing held? ☐ Yes ☐ No

b. (1) Name of court: _____

(2) Case number: _____

(3) Date filed (or if mailed, the date the petition was turned over to the prison authorities for mailing): _____

(4) Grounds raised (list each):

(a) N/A

(b) _____

(c) _____

(d) _____

(e) _____

(f) _____

(5) Date of decision: _____

(6) Result N/A

(7) Was an evidentiary hearing held? ☐ Yes ☒ No

11. Do you have any petitions now pending (i.e., filed but not yet decided) in any state or federal court with respect to this judgment of conviction? ☐ Yes ☒ No

If so, give the following information (and attach a copy of the petition if available):

(1) Name of court: _____

(2) Case number: _____

(3) Date filed (or if mailed, the date the petition was turned over to the prison authorities for mailing): _____

(4) Grounds raised (list each):

(a) _____

(b) _____

(c) _____

(d) _____

(e) _____

(f) _____

12. Are you presently represented by counsel? ☐ Yes ☒ No

If so, provide name, address and telephone number: _____

WHEREFORE, petitioner prays that the Court grant petitioner all relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on 1-8-2023
Date

[Signature]
Signature of Petitioner